

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

GREGORY DAVIS,

Plaintiff,

v.

CIVIL ACTION NO. 1:07CV63
(Judge Keeley)

UNITED STATES OF AMERICA;
UNITED STATES DEPARTMENT OF JUSTICE;
UNITED STATES FEDERAL BUREAU OF PRISONS;
FCI GILMER;
JOHN DOE MAIL ROOM STAFF EMPLOYEES;

Defendants.

ORDER ADOPTING REPORT AND RECOMMENDATION

On May 14, 2007, the *pro se* plaintiff, Gregory Davis ["Davis"], an inmate at FCI Gilmer, filed his complaint pursuant to Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics, 403 U.S. 388 (1971), a case in which the United States Supreme Court created a counterpart to 42 U.S.C. 1983 and authorized suits against federal employees in their individual capacities. In addition, Davis has alleged a claim pursuant to the Federal Tort Claims Act ("FTCA"). On May 22, 2007, Davis was granted leave to proceed *in forma pauperis*.

On November 6, 2007, United States Magistrate Judge James E. Seibert entered a Report and Recommendation ("R&R") recommending that this Court:

(1) dismiss with prejudice Davis' Bivens claim against the United States of America, United States Department of Justice,

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United States Federal Bureau of Prisons, and FCI Gilmer because he failed to name proper defendants;

(2) dismiss with prejudice Davis' Bivens claim against the "John Doe" mail room staff employees because he failed to exhaust his administrative remedies; and

(3) dismiss with prejudice Davis' FTCA claim for failure to state a claim.

On November 8, 2007, Davis filed objections to the R&R (dkt. no. 21) and a motion that the defendants be served with a summons and complaint (dkt. no. 20). In Davis' objection, he baldly asserts that his claims should not be dismissed for failure to state a claim but fails to provide any specific reasons as to why.

This Court's review of Davis' objections is *de novo*, but it may adopt without *de novo* review¹ all parts of the R&R to which Davis has not objected. Upon *de novo* review, this Court finds that the Magistrate Judge properly applied the controlling case law of FDIC v. Meyers, 510 U.S. 471, 486 (1994), which states that a Bivens action may only be brought against individuals, not the federal government or federal government agencies. The Magistrate Judge also properly applied 28 C.F.R. §§ 540.10-542.15 in

¹It is unclear to which claims Davis is objecting. Therefore, the Court reviews all the claims *de novo*.

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determining that Davis' Bivens claim against the "John Doe" mail room staff employees should be dismissed without prejudice for failure to exhaust administrative remedies. Furthermore, the Magistrate Judge properly applied 28 U.S.C. 1346(b) in determining that Davis' complaint failed to state a claim under the FTCA.

Consequently, for the reasons set forth above, the Court

- 1) **ADOPTS** the Report and Recommendation in its entirety,
- 2) **DISMISSES** Davis' Bivens claim against the United States of America, United States Department of Justice, United States Federal Bureau of Prisons, and FCI Gilmer **WITH PREJUDICE**,
- 3) **DISMISSES** Davis' Bivens claim against the "John Doe" mail room staff employees **WITHOUT PREJUDICE**, and
- 4) **DISMISSES** Davis' Federal Tort Claim Act claim **WITH PREJUDICE**,
- 5) **DENIES** Davis' motion (dkt. no. 20) **AS MOOT**, and **DIRECTS** the Clerk to **STRIKE** this case from the Court's docket.

The Clerk is directed to send a copy of this Memorandum Opinion and Order to the *pro se* plaintiff and to counsel of record.

DATED: November 13, 2007.

/s/ Irene M. Keeley
IRENE M. KEELEY
UNITED STATES DISTRICT JUDGE